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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To require the Federal Energy Regulatory Commission to certify an Energy Product Reliability Organization which shall, subject to Commission review, establish and enforce energy product reliability standards, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. RUSH introduced the following bill; which was referred to the Committee
on _____

A BILL

To require the Federal Energy Regulatory Commission to certify an Energy Product Reliability Organization which shall, subject to Commission review, establish and enforce energy product reliability standards, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Product Reli-
5 ability Act”.

1 **SEC. 2. ENERGY PRODUCT RELIABILITY STANDARDS.**

2 (a) DEFINITIONS.—In this section:

3 (1) COMMISSION.—The term “Commission”
4 means the Federal Energy Regulatory Commission.

5 (2) CYBERSECURITY INCIDENT.—The term “cy-
6 bersecurity incident” means a malicious act or sus-
7 picious event that disrupts, or was an attempt to
8 disrupt, the operation of programmable electronic
9 devices and communication networks, including
10 hardware, software, and data, that are essential to
11 the reliable delivery of an energy product through an
12 energy pipeline.

13 (3) ENERGY PIPELINE.—The term “energy
14 pipeline” means a pipeline for the delivery of an en-
15 ergy product, including any facility or control system
16 necessary for the operation of such a pipeline.

17 (4) ENERGY PRODUCT.—The term “energy
18 product” includes natural gas, hydrogen, petroleum,
19 and a petroleum product.

20 (5) ENERGY PRODUCT RELIABILITY STAND-
21 ARD.—The term “energy product reliability stand-
22 ard” means a requirement approved, established, or
23 modified by the Commission under this section to
24 provide for the reliable delivery of an energy product
25 through an energy pipeline.

1 (6) ENERGY PRODUCT RELIABILITY ORGANIZA-
2 TION; EPRO.—The terms “Energy Product Reli-
3 ability Organization” and “EPRO” mean the orga-
4 nization certified by the Commission under sub-
5 section (d) to establish and enforce energy product
6 reliability standards, subject to Commission review.

7 (b) JURISDICTION AND APPLICABILITY.—

8 (1) JURISDICTION.—The Commission shall have
9 jurisdiction, within the United States, over the En-
10 ergy Product Reliability Organization certified by
11 the Commission under subsection (d) and all users,
12 owners, and operators of energy pipelines, for pur-
13 poses of approving energy product reliability stand-
14 ards established under this section and enforcing
15 compliance with this section.

16 (2) APPLICABILITY.—All users, owners, and op-
17 erators of energy pipelines shall comply with energy
18 product reliability standards that take effect under
19 this section.

20 (c) RULE.—Not later than 270 days after the date
21 of enactment of this section, the Commission, in consulta-
22 tion with the Administrator of the Transportation Secu-
23 rity Administration, the Secretary of Energy, the Sec-
24 retary of Transportation, the Electric Reliability Organi-
25 zation (as defined in section 215 of the Federal Power

1 Act (16 U.S.C. 824o)), and any other Federal agency or
2 organization the Commission determines appropriate,
3 shall issue a final rule to implement this section.

4 (d) CERTIFICATION.—

5 (1) APPLICATION.—Following the issuance of a
6 final rule under subsection (c), any person may sub-
7 mit an application to the Commission for certifi-
8 cation as the Energy Product Reliability Organiza-
9 tion.

10 (2) CERTIFICATION.—Not later than 2 years
11 after the date of enactment of this Act, the Commis-
12 sion shall certify one Energy Product Reliability Or-
13 ganization if the Commission determines that such
14 Energy Product Reliability Organization—

15 (A) has the ability to develop and enforce
16 energy product reliability standards; and

17 (B) has established rules that—

18 (i) ensure its independence from the
19 users, owners, and operators of energy
20 pipelines, while ensuring fair stakeholder
21 representation in the selection of its direc-
22 tors and balanced decisionmaking in any
23 Energy Product Reliability Organization
24 committee or subordinate organizational
25 structure;

1 (ii) equitably allocate reasonable dues,
2 fees, and other charges among end users
3 for all activities under this section;

4 (iii) provide fair and impartial proce-
5 dures for enforcement of energy product
6 reliability standards through the imposition
7 of penalties in accordance with subsection
8 (g) (including limitations on activities,
9 functions, or operations, or other appro-
10 priate sanctions);

11 (iv) provide for reasonable notice and
12 opportunity for public comment, due proc-
13 ess, openness, and balance of interests in
14 developing energy product reliability stand-
15 ards and otherwise exercising its duties;
16 and

17 (v) provide for taking, after certifi-
18 cation, appropriate steps to gain recogni-
19 tion in Canada and Mexico.

20 (e) ENERGY PRODUCT RELIABILITY STANDARDS.—

21 (1) FILING.—The Energy Product Reliability
22 Organization shall file each energy product reliability
23 standard, or modification to an energy product reli-
24 ability standard, that is proposed to be made effec-
25 tive under this section with the Commission.

1 (2) APPROVAL.—The Commission may approve,
2 by rule or order, a proposed energy product reli-
3 ability standard, or modification to an energy prod-
4 uct reliability standard, if it determines that the en-
5 ergy product reliability standard is just, reasonable,
6 not unduly discriminatory or preferential, and in the
7 public interest.

8 (3) INCLUDED STANDARDS.—In carrying out
9 this section, the Energy Product Reliability Organi-
10 zation shall, at a minimum, establish energy product
11 reliability standards relating to—

12 (A) cybersecurity, including protocols for
13 the reporting of cybersecurity incidents;

14 (B) physical security; and

15 (C) coordination of delivery and availability
16 of energy products to ensure reliable electricity
17 generation, including electricity generation that
18 is needed to maintain electric transmission sys-
19 tem reliability.

20 (4) CONSULTATION.—The Energy Product Re-
21 liability Organization shall consult with the Adminis-
22 trator of the Transportation Security Administration
23 and the Secretary of Energy in developing energy
24 product reliability standards relating to cybersecu-
25 rity for energy pipelines.

1 (5) TECHNICAL EXPERTISE.—The Commission
2 shall give due weight to the technical expertise of the
3 Energy Product Reliability Organization with re-
4 spect to the content of a proposed energy product
5 reliability standard or modification to an energy
6 product reliability standard, but shall not defer with
7 respect to the effect of an energy product reliability
8 standard on competition.

9 (6) EFFECT.—A proposed energy product reli-
10 ability standard or modification to an energy prod-
11 uct reliability standard shall take effect upon ap-
12 proval by the Commission.

13 (7) REMAND.—The Commission shall remand
14 to the Energy Product Reliability Organization for
15 further consideration a proposed energy product reli-
16 ability standard or a modification to an energy prod-
17 uct reliability standard that the Commission dis-
18 approves in whole or in part.

19 (8) COMMISSION ORDER.—The Commission,
20 upon its own motion or upon complaint, may order
21 the Energy Product Reliability Organization to sub-
22 mit to the Commission a proposed energy product
23 reliability standard or a modification to an energy
24 product reliability standard that addresses a specific
25 matter if the Commission considers such a new or

1 modified energy product reliability standard appro-
2 priate to carry out this section.

3 (f) EMERGENCY ENERGY PRODUCT RELIABILITY
4 STANDARDS.—

5 (1) IN GENERAL.—The Commission may estab-
6 lish or modify an energy product reliability standard
7 to address continuing or foreseeable emergency con-
8 ditions if the Commission determines that—

9 (A) the energy product reliability stand-
10 ards approved under subsection (e) do not ade-
11 quately provide for the reliable delivery of en-
12 ergy products through energy pipelines under
13 such emergency conditions; and

14 (B) the use of the process for developing
15 energy product reliability standards pursuant to
16 subsection (e) would not result in the establish-
17 ment or modification of an energy product reli-
18 ability standard that provides for the reliable
19 delivery of energy products through energy
20 pipelines under such conditions in a timely
21 manner.

22 (2) CONSULTATION.—Not later than 6 months
23 after the effective date of an energy product reli-
24 ability standard established or modified under this
25 subsection, the Commission shall consult with the

1 Energy Product Reliability Organization, the Admin-
2 istrator of the Transportation Security Administra-
3 tion, and any other Federal agency the Commission
4 determines appropriate to determine whether such
5 energy product reliability standard should remain in
6 effect or be modified.

7 (g) ENFORCEMENT.—

8 (1) IN GENERAL.—The Energy Product Reli-
9 ability Organization may impose a penalty on a user,
10 owner, or operator of an energy pipeline for a viola-
11 tion of an energy product reliability standard ap-
12 proved by the Commission under subsection (e) if
13 the Energy Product Reliability Organization, after
14 notice and an opportunity for a hearing—

15 (A) finds that the user, owner, or operator
16 has violated an energy product reliability stand-
17 ard approved by the Commission under sub-
18 section (e); and

19 (B) files notice and the record of the pro-
20 ceeding with the Commission.

21 (2) PROCEDURES.—A penalty imposed under
22 paragraph (1) may take effect not earlier than the
23 31st day after the Energy Product Reliability Orga-
24 nization files with the Commission notice of the pen-
25 alty and the record of proceedings. Such penalty

1 shall be subject to review by the Commission, on its
2 own motion or upon application by the user, owner,
3 or operator that is the subject of the penalty filed
4 within 30 days after the date such notice is filed
5 with the Commission. Application to the Commission
6 for review, or the initiation of review by the Commis-
7 sion on its own motion, shall not operate as a stay
8 of such penalty unless the Commission otherwise or-
9 ders upon its own motion or upon application by the
10 user, owner, or operator that is the subject of such
11 penalty. In any proceeding to review a penalty im-
12 posed under paragraph (1), the Commission, after
13 notice and opportunity for hearing (which hearing
14 may consist solely of the record before the Energy
15 Product Reliability Organization and opportunity for
16 the presentation of supporting reasons to affirm,
17 modify, or set aside the penalty), shall by order af-
18 firm, set aside, reinstate, or modify the penalty, and,
19 if appropriate, remand to the Energy Product Reli-
20 ability Organization for further proceedings. The
21 Commission shall implement expedited procedures
22 for such hearings.

23 (3) COMMISSION ENFORCEMENT.—On its own
24 motion or upon complaint, the Commission may
25 order compliance with an energy product reliability

1 standard and may impose a penalty against a user,
2 owner, or operator of an energy pipeline if the Com-
3 mission finds, after notice and opportunity for a
4 hearing, that the user, owner, or operator of the en-
5 ergy pipeline has engaged or is about to engage in
6 any acts or practices that constitute or will con-
7 stitute a violation of an energy product reliability
8 standard.

9 (4) PROTECTION OF INFORMATION.—Any no-
10 tice of enforcement or record pertaining to a viola-
11 tion of an energy product reliability standard relat-
12 ing to cybersecurity submitted to the Commission
13 shall be deemed to be critical electric infrastructure
14 information (as defined in section 215A of the Fed-
15 eral Power Act (16 U.S.C. 824o–1)).

16 (5) EPRO COMPLIANCE.—The Commission
17 may take such action as is necessary or appropriate
18 against the Energy Product Reliability Organization
19 to ensure compliance with an energy product reli-
20 ability standard or any Commission order affecting
21 the Energy Product Reliability Organization.

22 (6) CONSIDERATIONS.—Any penalty imposed
23 under this section shall bear a reasonable relation to
24 the seriousness of the violation and shall take into

1 consideration the efforts of the user, owner, or oper-
2 ator to remedy the violation in a timely manner.

3 (h) CHANGES IN EPRO RULES.—The Energy Prod-
4 uct Reliability Organization shall, with respect to the rules
5 of the Energy Product Reliability Organization, file with
6 the Commission for approval any proposed rule or pro-
7 posed rule change, accompanied by an explanation of its
8 basis and purpose. The Commission, upon its own motion
9 or complaint, may propose a change to the rules of the
10 Energy Product Reliability Organization. A proposed rule
11 or proposed rule change shall take effect upon a finding
12 by the Commission, after notice and opportunity for com-
13 ment, that the change is just, reasonable, not unduly dis-
14 criminatory or preferential, is in the public interest, and
15 satisfies the requirements of subsection (d).

16 (i) RELIABILITY REPORTS.—The Energy Product
17 Reliability Organization shall conduct and submit to the
18 Committee on Energy and Commerce of the House of
19 Representatives and the Committee on Energy and Nat-
20 ural Resources of the Senate periodic assessments of the
21 reliable delivery of energy products through energy pipe-
22 lines in North America.

23 (j) SAVINGS PROVISIONS.—

24 (1) CONSTRUCTION.—This section does not au-
25 thorize the Energy Product Reliability Organization

1 or the Commission to order the construction of addi-
2 tional energy pipelines or to set and enforce compli-
3 ance with standards for adequacy or safety of energy
4 pipelines or services.

5 (2) STATE AUTHORITY.—

6 (A) IN GENERAL.—Nothing in this section
7 shall be construed to preempt any authority of
8 any State to take action to ensure the reliable
9 delivery of energy products through energy
10 pipelines within that State, as long as such ac-
11 tion is not inconsistent with any energy product
12 reliability standard.

13 (B) STATE ACTION.—Not later than 90
14 days after the application of the Energy Prod-
15 uct Reliability Organization or other affected
16 party, and after notice and opportunity for
17 comment, the Commission shall issue a final
18 order determining whether a State action is in-
19 consistent with an energy product reliability
20 standard, taking into consideration any rec-
21 ommendation of the Energy Product Reliability
22 Organization.

23 (C) STAY OF EFFECTIVENESS.—The Com-
24 mission, after consultation with the Energy
25 Product Reliability Organization and the State

1 taking action, may stay the effectiveness of any
2 State action, pending the Commission's
3 issuance of a final order.